

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

WALTER BEINECKE, III, EAGLIS
ALTERNATIVE INVESTMENTS I, LLC,
GEOFFREY T. FREEMAN, GRAHAM GUND,
HENRY A. JORDAN, JENNIFER C. McNEIL,
J. STUART MOORE, and CARL NOVOTNY,
TRUSTEE of the S&H NOMINEE TRUST,

Plaintiffs,

-against-

S&H MARKETING, INC. f/k/a S&H
GREENPOINTS, INC., and THE SPERRY AND
HUTCHINSON COMPANY, INC.,

Defendants.

08 Civ. 2483 (GBD)

ELECTRONICALLY FILED

**DECLARATION OF THOMAS LUMSDEN
IN SUPPORT OF DEFENDANTS S&H
MARKETING, INC. AND THE SPERRY
AND HUTCHINSON COMPANY, INC.'S
MOTION TO TRANSFER VENUE TO
THE CENTRAL DISTRICT OF
CALIFORNIA**

I, THOMAS LUMSDEN, pursuant to 28 U.S.C. § 1746, declare and state as follows:

1. I am a Senior Managing Director of FTI, Inc. I have been employed by FTI and its predecessor firms for over 25 years. During that time I have provided accounting and management consulting services to many different kinds of troubled businesses and creditors and other parties interested in troubled businesses. Except where otherwise indicated below, I have personal knowledge of the facts set forth in this Declaration. If called and sworn as a witness, I could and would testify competently thereto.

2. On or about October 31, 2007, some of Solidus Networks, Inc.'s ("Solidus") creditors filed an involuntary chapter 11 bankruptcy petition against Solidus in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"). On December 14, 2007, Solidus consented to the entry of an order for relief under chapter 11 of the Bankruptcy Code and many of Solidus's subsidiaries filed voluntary chapter 11 bankruptcy petitions (together, the "Debtors"). Solidus is presently a chapter 11 debtor-in-possession in a case

pending before the Honorable Thomas Donovan in the Central District of California Bankruptcy Court entitled, *In re Solidus Networks, Inc., d/b/a Pay By Touch, a/f/k/a Pay By Touch Solutions*, 07-BK-20027-TD (the “Bankruptcy Proceeding”).

3. On November 16, 2007, the Court of the Chancery of the State of Delaware appointed me Custodian of Solidus in connection with an action entitled *Plainfield Special Situations Master Fund Limited v. Solidus Networks, Inc., d/b/a Pay By Touch*, C.A. No. 3308-VCS (Del. Ch. Oct. 23, 2007). Subsequently, on or about December 21, 2007, the Solidus Board of Directors appointed me Chief Restructuring Officer of the Debtors.

4. In my capacity as Custodian and then as Chief Restructuring Officer, I have generally supervised the operations of the Debtors, conducted extensive analyses of the financial structure of the Debtors, analyzed ways in which their operations could be improved, analyzed current cash flow of the Debtors, assumed a primary role in discussing the financial condition of the Debtors with their bank lenders and other creditors, and generally supervised and advised on all aspects of the Debtors’ business operations. As a result of the foregoing, I am thoroughly familiar with the Debtors’ business operations, their financial condition, their cash flow, and debt structure.

5. As Chief Restructuring Officer, I perform various management functions, including, without limitation, overseeing the daily financial and business operations of Solidus and its debtor and non-debtor subsidiaries—including S&H Marketing, Inc. (“S&H”) and The Sperry and Hutchinson Company, Inc. (“Sperry”)—participating in negotiations and implementing their financial and operational restructuring activities in systems review. I have devoted a substantial amount of time to reviewing and becoming familiar with the assets and liabilities of the Debtors, their policies and practices with respect to employee wages, salaries,

and other benefits, their cash management system, and other aspects of the Debtors' financial reporting.

6. Since 2005, Solidus financed its operations through a series of senior notes issued pursuant to a Securities Purchase Agreement (the "SPA") that Solidus entered into with the holders of these senior notes (the "Senior Creditors").

7. In mid-2006, Solidus and S&H began discussing a merger. In December 2006, a subsidiary of Solidus merged into S&H, as a result of which S&H became a direct subsidiary of Solidus, and Sperry became Solidus's second-tier subsidiary.

8. On June 15, 2007, S&H and Sperry jointly and severally guaranteed Solidus's obligations to the Senior Creditors. S&H and Sperry secured that guarantee with liens on most of their assets.

9. In December 2007, Solidus arranged for debtor-in-possession ("DIP") financing with its Senior Creditors. S&H and Sperry, together with Solidus and its other subsidiaries, signed guarantees in support of these critical loans, which allowed Solidus to continue as a going concern. S&H and Sperry guaranteed that DIP financing (and secured the guarantees) with liens on most of their assets. Through the DIP financing, S&H/Sperry received nearly \$1 million to fund their operations.

10. Plaintiffs filed their complaint in New York Supreme Court as *Beinecke v. S&H Marketing, Inc. et al.*, No. 600503-08, on February 19, 2008. Defendants removed Plaintiffs' state court action to this Court on March 11, 2008 (the "Action").

11. Solidus is now seeking to sell its stock in S&H through a Bankruptcy Court-approved auction, and the Bankruptcy Court has issued an Order governing the procedures for the sale of that stock and the conduct of the auction. On March 5, 2008, Plaintiffs submitted a

bid in connection with that auction. That bid was conditioned on the Senior Creditors releasing their guarantees from S&H and Sperry and the liens securing those guarantees.

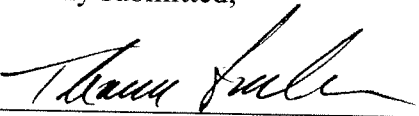
12. Invalidating the S&H and Sperry guarantees could amount to a “Termination Event” pursuant to Solidus’s loan financing agreements and the Bankruptcy Court’s Order approving the DIP financing. As such, this Action is directly related to and will have an impact on the Bankruptcy Proceeding.

13. Solidus is incorporated in Delaware, is headquartered in San Francisco, California, and has more than 300 employees. All of Solidus’s Senior Creditors are deeply involved in the Bankruptcy Proceeding in California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: March 14, 2008

Respectfully submitted,

By: 
Thomas Lumsden